

Electronically filed on February 1, 2007

Annette W. Jarvis (Utah Bar No. 1649)  
 Steven C. Strong (Utah Bar No. 6340)  
 RAY QUINNEY & NEBEKER P.C.  
 36 South State Street, Suite 1400  
 P.O. Box 45385  
 Salt Lake City, Utah 84145-0385  
 Telephone: (801) 532-1500  
 Facsimile: (801) 532-7543  
 Email: [ajarvis@rqn.com](mailto:ajarvis@rqn.com)

Lenard E. Schwartz (Nevada Bar No. 0399)  
 Jeanette E. McPherson (Nevada Bar No. 5423)  
 SCHWARTZER & MCPHERSON LAW FIRM  
 2850 South Jones Boulevard, Suite 1  
 Las Vegas, Nevada 89146-5308  
 Telephone: (702) 228-7590  
 Facsimile: (702) 892-0122  
 Email: [bkfilings@s-mlaw.com](mailto:bkfilings@s-mlaw.com)

*Attorneys for Debtors and Debtors-in-Possession*

Marc A. Levinson (California Bar No. 57613)  
 Jeffery D. Hermann (California Bar No. 90445)  
 ORRICK, HERRINGTON & SUTCLIFFE LLP  
 400 Capitol Mall, Suite 3000  
 Sacramento, CA 95814-4497  
 Telephone: (916) 447-9200  
 Facsimile: (916) 329-4900  
 Email: [malevinson@orrick.com](mailto:malevinson@orrick.com);  
[jhermann@orrick.com](mailto:jhermann@orrick.com)

Bob L. Olson (Nevada Bar No. 3783)  
 Anne M. Loraditch (Nevada Bar No. 8164)  
 BECKLEY SINGLETON, CHTD.  
 530 Las Vegas Boulevard South  
 Las Vegas, NV 89101  
 Telephone: (702) 385-3373  
 Facsimile: (702) 385-5024  
 Email: [bolson@beckleylaw.com](mailto:bolson@beckleylaw.com);  
[aloraditch@beckleylaw.com](mailto:aloraditch@beckleylaw.com)

*Attorneys for the Official Committee of Equity Security  
 Holders of USA Capital Diversified Trust Deed Fund, LLC*

**UNITED STATES BANKRUPTCY COURT  
 DISTRICT OF NEVADA**

In re:  
 USA COMMERCIAL MORTGAGE COMPANY,  
 Debtor.

In re:  
 USA CAPITAL REALTY ADVISORS, LLC,  
 Debtor.

In re:  
 USA CAPITAL DIVERSIFIED TRUST DEED  
 FUND, LLC,  
 Debtor.

In re:  
 USA CAPITAL FIRST TRUST DEED FUND, LLC,  
 Debtor.

Case No. BK-S-06-10725 LBR  
 Case No. BK-S-06-10726 LBR  
 Case No. BK-S-06-10727 LBR  
 Case No. BK-S-06-10728 LBR  
 Case No. BK-S-06-10729 LBR

Chapter 11

Jointly Administered Under  
 Case No. BK-S-06-10725-LBR

In re:  
USA SECURITIES, LLC,  
Debtor.

**JOINT EX PARTE APPLICATION  
FOR ORDER REQUIRING GARTH  
MCBRIDE TO APPEAR FOR  
EXAMINATION PURSUANT  
TO FEDERAL RULE OF  
BANKRUPTCY PROCEDURE 2004**

[No hearing required]

**Affects:**

- ☒ All Debtors
- ☐ USA Commercial Mortgage Company
- ☐ USA Securities, LLC
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA First Trust Deed Fund, LLC

Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (hereinafter, the "Bankruptcy Rules"), USA Capital Diversified Trust Deed Fund, LLC (hereinafter, "Diversified"), and the Official Committee of Equity Security Holders of USA Capital Diversified Trust Deed Fund, LLC (hereafter, the "Diversified Committee"), by and through their respective counsel noted above,<sup>1</sup> hereby apply to this Court for an order setting the examination of Garth McBride, under oath, under Bankruptcy Rule 2004. This Application is explained in the following Memorandum.

**MEMORANDUM**

Diversified and the Diversified Committee are seeking information from Garth McBride concerning the financial audits and/or reviews performed by Beadle, McBride, Evans & Reeves, LLP on Diversified, the other debtors in the above-captioned cases (together with Diversified, the "Debtors"), and the Debtors' affiliates, subsidiaries, parents, or otherwise related entities. Diversified and the Diversified Committee seek this information to assist in the collection of the assets and investigation of the liabilities of Diversified.

---

<sup>1</sup> Diversified and the Diversified Committee make this Application jointly because counsel for the Diversified Committee will become counsel to the reorganized Diversified entity subsequent to the Effective Date under the Debtors' Third Amended Chapter 11 Plan, which was confirmed by the Court pursuant to its order entered January 8, 2007.

1 The requested discovery from Garth McBride is well within the scope of the examination  
2 permitted pursuant to Bankruptcy Rule 2004, which includes:

3 [A]cts, conduct, or property or . . . the liabilities and financial condition of  
4 the debtor, or . . . any matter which may affect the administration of the  
5 debtor's estate, or to the debtor's right to a discharge. In a . . .  
6 reorganization case under chapter 11 of the Code, . . . the examination  
7 may also relate to the operation of any business and the desirability of its  
8 continuance, the source of any money or property acquired or to be  
9 acquired by the debtor for purposes of consummating a plan and the  
10 consideration given or offered therefore, and any other matter relevant to  
11 the case or to the formulation of a plan.

12 Fed.R.Bankr.P. 2004(b).

13 Bankruptcy Rule 2004(a) provides that "[o]n motion of any party in interest, the court  
14 may order the examination of any entity." Rule 2004 of the Local Rules of Bankruptcy  
15 Procedure (hereinafter, the "Local Rules") provides, in pertinent part:

16 (b) Order for examination. Orders for examination may be signed by  
17 the clerk if the date set for examination is more than ten (10) business days  
18 from the date such motion is filed....

19 LR 2004(b).

20 As required by the Local Rules, the date for the proposed examination is more than ten  
21 (10) business days from the date of this Motion.

## 22 CONCLUSION

23 Accordingly, Diversified and the Diversified Committee respectfully request that the  
24 Clerk of the Court docket the form of Order submitted herewith requiring Garth McBride to  
25 testify under oath on the matters outlined above and requiring that Garth McBride, under Rule  
26 30(b)(6) of the Federal Rules of Civil Procedure, be required to appear on February 28, 2007, at

27 ///

28 ///

///

///

///

1 11:00 o'clock a.m. prevailing Pacific Time at the law offices of Beckley Singleton, Chtd., 530  
2 Las Vegas Boulevard South, Las Vegas, Nevada 89101.

3 Respectfully submitted this 1st day of February 2007.

4 BECKLEY SINGLETON, CHTD.

RAY, QUINNEY & NEBEKER, P.C.

5 /s/ Anne M. Loraditch

/s/ Steven C. Strong

6 Bob L. Olson (Nevada Bar No. 3783)  
7 Anne M. Loraditch (Nevada Bar No. 8164)  
8 530 Las Vegas Boulevard South  
Las Vegas, NV 89101

Annette W. Jarvis (Utah Bar No. 1649)  
Steven C. Strong (Utah Bar No. 6340)  
RAY QUINNEY & NEBEKER P.C.  
36 South State Street, Suite 1400  
P.O. Box 45385  
Salt Lake City, Utah 84145-0385

9 and

and

10 Marc A. Levinson (California Bar No. 57613)  
11 Jeffery D. Hermann (California Bar No. 90445)  
ORRICK, HERRINGTON & SUTCLIFFE LLP  
12 400 Capitol Mall, Suite 3000  
Sacramento, CA 95814-4497

Lenard E. Schwartzer (Nevada Bar No. 0399)  
Jeanette E. McPherson (Nevada Bar No. 5423)  
SCHWARTZER & MCPHERSON LAW FIRM  
2850 South Jones Boulevard, Suite 1  
Las Vegas, Nevada 89146-5308

13 *Attorneys for the Official Committee of Equity*  
14 *Security Holders of USA Capital Diversified*  
15 *Trust Deed Fund, LLC*

*Attorneys for Debtors and Debtors-in-Possessor*